

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1288 OF 2005**

Prafulla Maheshwari & Ors.

...Petitioners

vs.

The State of Maharashtra & Ors.

...Respondents

Mr.Shirish Gupte with Mr.Niranjan Pandit and Ms Kapadia i/b
M/s.Joy Legal Consultant for the Petitioner
Mr.K.V.Saste,A.P.P. for State
Mr.Rajan K. Kakkara for Respondent No.2

**CORAM: A.S.OKA,J.
DATE : JULY 7,2005.**

P.C.:

1. This Petition is by the original accused Nos.2 to 4 and 8. The substantive prayer made in this Petition is for quashing the proceeding against the Petitioners in Criminal Complaint No.403/S/2005. Shri Gupte, learned Senior Counsel for the Petitioners state that at this stage, the Petitioners are not pressing the prayer clause (a) and the Petitioners reserve their right to claim relief as per prayer clause (a) at appropriate stage.

2. He submitted that the challenge in this Petition is confined to the order dated 1st April 2005 which shows that the application for exemption made by the Petitioners which is at page No.40 of the compilation has not been considered on merits. The order dated 1st April 2005 shows that the learned Magistrate granted exemption in favour of the Petitioners from appearance limited to that day and did not consider the application of the Petitioners on merits by observing that

some of the accused including the Petitioner No.4 herein had not appeared before him.

3. The prayer made in the Application made by the Petitioners was under Section 205 and 317 of the Code of Criminal Procedure, 1973 for dispensing with personal appearance of the Petitioners and for grant of permanent exemption to the Petitioners.

4. After having heard the Counsel appearing for the parties, I find that the learned Judge has not considered the merits of the said Application. In my view, it was necessary for the learned Judge to consider the merits of the said Application and to pass appropriate order thereon. I am informed that the next date fixed in the said case is 13th July 2005. If the Petitioners want their application to be considered on merits, it is necessary for the Petitioners to appear personally before the learned Magistrate. Shri Gupte, learned Senior Counsel submitted that since the Petitioners are staying at Bhopal, it will be difficult for them to make arrangement to appear personally on 13th July 2005. It is obvious that the application made by the Petitioners cannot be considered on merits unless the Petitioners appear before the learned Magistrate. If the Petitioners appear before the learned Magistrate personally, the learned Judge will have to consider their application for exemption.

5. Hence the Petition is disposed of by passing the following order :

i) If the Petitioners appear before the learned Magistrate on 11th August 2005, the learned Magistrate will consider the application already made by the Petitioners for grant of permanent exemption on merits in accordance with law.

ii) If the Petitioners fail to appear before the learned Magistrate on 11th August 2005, the learned Magistrate will be free to pass appropriate order against the Petitioners in accordance with law.

iii) The Petitioners are exempted from appearing in person on 13th July 2005 which is the next date fixed before the learned Magistrate. However, the Petitioners will be represented by an Advocate.

iv) Petition is disposed of in above terms.

v) All questions on merits are kept open.

. Parties and the concerned Court to act upon an authenticated copy of this order.

JUDGE